

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO**

<b>IN RE:</b>	)	<b>Case No. 17-17361</b>
	)	
	)	<b>Chapter 11</b>
<b>RICHARD M. OSBORNE</b>	)	
	)	<b>Judge Arthur I. HARRIS</b>
<b>DEBTOR</b>	)	
	)	<b>MOTION OF DIANE OSBORNE</b>
	)	<b>TRUSTEE OF THE DIANE M.</b>
	)	<b>OSBORNE TRUST FOR RELIEF</b>
	)	<b>FROM STAY</b>
	)	
	)	<b>Warren County, Pennsylvania</b>
	)	<b>Parcel No. TD-1- 828000-00</b>
	)	<b>Parcel No. TD-1- 944000-00</b>
	)	<b>Parcel No. TD-1- 947720-00</b>
	)	<b>Parcel No. TD-1- 852000-00</b>
	)	<b>Parcel No. TD-1- 862200-00</b>
	)	<b>Parcel No. TD-1- 862000-00</b>
	)	<b>Parcel No. TD-1- 862200-00A</b>

Diane M. Osborne, Trustee of the Diane M. Osborne Trust, (the “Movant”) moves this Court, under Bankruptcy Code §§ 361, 362, 363, and other sections of Title 11 of the United States Code, under Federal Rules of Bankruptcy Procedure 4001 and 6007, and under [Local Bankruptcy Rule 4001-1](#) for an order conditioning, modifying or dissolving the automatic stay imposed by Bankruptcy Code § 362. **THIS MOTION DEVIATES FROM THE REQUIRED FORM DUE TO THE UNIQUE POSTURE OF THE MATTER. PURSUANT TO LOCAL RULE 4001-1, PARAGRAPHS DEVIATING FROM THE REQUIRED FORM ARE NOTED IN BOLDFACE TYPE.**

MEMORANDUM IN SUPPORT

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). The venue of this case and this motion is proper

under 28 U.S.C. §§ 1408 and 1409.

2. On October 14, 2002, the Debtor and the Rigrtona Trust, obtained a loan from OSAIR Inc., in the amount of \$3,245,327.12. Such loan was evidenced by a Amended and Restated Demand Promissory Note dated October 11, 2002, (the “Note”), a copy of which is attached as Exhibit A.

3. To secure payment of the Note and performance of the other terms contained in it, the Debtor and the Rigrtona Trust executed a Security Agreement in the form of Mortgage Deed in favor of OSAIR Inc. dated October 14, 2002 (the “Mortgage Deed ”). The Mortgage Deed granted a lien on 7 parcels of land located in Warren County, Pennsylvania more fully described in Exhibit B and owned by the Rigrtona Trust (the “Collateral”). **Prior to the filing of the bankruptcy, the Debtor dissolved the trust, which collateral then reverted to the Debtor and became an asset of the estate of the Debtor. The Collateral is more fully described in the Mortgage Deed as an attachment.**

4. **The lien created by the Mortgage Deed was duly perfected by filing the Mortgage Deed in the office of the Warren County, PA Recorder on October 14, 2002. A copy of the recorded Mortgage Deed, is attached as Exhibit C. Based on the recorder of Warren County, Pennsylvania, the lien is the 1<sup>st</sup> lien on the Collateral.**

5. **The entity in possession of the original Note as of the date of this motion, is OSAIR, Inc. 8500 Station Street, Mentor, Ohio 44060. On May 16, 2016, Osair Inc. granted, bargained, sold, assigned, conveyed and transferred, to Diane Osborne Trustee of the Diane M. Osborne Trust, the Mortgage Deed and Note described above, together with any and all rights, interests and appurtenances belonging; subject only to any right and equity of redemption of the mortgagor, its successors or assigns in the same. The Assignment provided for a release by the Assignee upon payment in full by Richard M. Osborne, as trustee, agent,**

**principal, representative, member of LLC or in any other capacity, the sum of ONE MILLION ONE HUNDRED THOUSAND DOLLARS (\$1,100,000), together with accrued interest as evidenced in Paragraph 7 of a Loan Agreement and Escrow Instructions dated February 25, 2016, by and between Diane M. Osborne, Trustee, as Lender, and Richard M. Osborne, as trustee and as agent and/or representative of the other listed obligors. A copy of the Loan Agreement and Escrow Instructions is attached as Exhibit “D” (the “Trust Loan”) to Diane M. Osborne, Trustee, for release.**

6. The entity servicing the loan is: the Movant.

7. **Although the Note has not been transferred it is partially assigned in the sum of ONE MILLION ONE HUNDRED THOUSAND DOLLARS (\$1,100,000), together with accrued interest to Diane M. Osborne, Trustee.**

8. **The Mortgage Deed and Note were partially assigned to Movant as security for a Loan dated February 25, 2016, by and between Diane M. Osborne, Trustee, as Lender, and Richard M. Osborne, as trustee and as agent and/or representative of the other listed obligors. A copy of the recorded assignment is attached as Exhibit “E”.**

9. The value of the Collateral is \$744,818.00. This valuation is based on tax evaluation by the Auditor of Warren County, Pennsylvania as well as the stated value of the Debtor's schedules.

10. **As of the date of this Motion, there is currently due and owing on the Note the outstanding principal balance of \$3,245,327.12, plus \$168,720.49 interest accruing thereon at the rate of 3.9% per annum from October 11, 2002, as described in more detail on the worksheet attached as Exhibit "F". The total provided in this paragraph cannot be relied upon as a payoff quotation.**

11. **As of the date of this Motion, there is currently due and owing on the Trust Loan**

**the outstanding principal balance of \$700,000, plus \$160,000.00 interest accruing thereon at the rate of 6% per annum from February 25, 2016, as described in more detail on the worksheet attached as Exhibit “G”.**

**12. Movant is not holding any funds in suspense and therefore the amount due and owing on the Note or the Trust Loan does not include a credit for any sums held in a suspense account.**

**13. According to Debtor's schedules, the only other parties known to have or potentially have an interest in the Property besides the Debtor and the Movant, are the Warren County Treasurer, for real estate taxes in an undetermined amount and OSAIR, Inc. in the amount of \$2,145,327.12.**

**14. The Movant is entitled to relief from the automatic stay under Bankruptcy Code § 362(d) for these reason(s) (check all that apply):**

- ☒ Debtor has failed to provide adequate protection for the lien held by the Movant for these reasons: That the Debtor has not made any consistent payments of interest or principal.
- ☐ Debtor has failed to keep the Collateral insured as required by the Security Agreement.
- ☐ Debtor has failed to keep current the real estate taxes owed on the Collateral.
- ☐ Debtor has failed to make periodic payments to Movant for the months of <STATE EACH MONTH AND YEAR>, which unpaid payments are in the aggregate amount of <AMOUNT> through <DATE>. The total provided in this paragraph cannot be relied upon as a reinstatement

quotation.

× Debtor has no equity in the Collateral, because the Collateral is valued at \$744,818.00, and including the Movant's lien, there are liens in an aggregate amount of \$3,245,327.12 on the Collateral.

☐ Other cause (set forth with specificity): \_\_\_\_\_

15. Movant has completed the worksheets, attached as Exhibit F and Exhibit G.

WHEREFORE, Movant prays for an order from the Court:

(a) granting Movant relief from the automatic stay of Bankruptcy Code § 362 to permit Movant to proceed under applicable nonbankruptcy law.

Respectfully submitted,

/s/Dennis J. Kaselak

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Attorney for Movant, Diane M. Osborne Trustee of  
the Diane M. Osborne Trust

### CERTIFICATE OF SERVICE

The undersigned certifies that on December 28, 2018, a true and correct copy of the foregoing ***Motion of Diane Osborne Trustee of the Diane M. Osborne Trust for Relief From Stay and Abandonment*** was served via the Court's electronic case filing system on the following who are listed on the Court's Electronic Mail Notice List:

#### Via Court Electronic System:

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